

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Katherine White	Team: Squad #5	CCRB Case #: 201909972	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 09/20/2019 7:27 PM	Location of Incident: § 87(2)(b)	Precinct: 50	18 Mo. SOL 3/20/2021	EO SOL 11/4/2021	
Date/Time CV Reported Thu, 11/14/2019 2:41 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 11/14/2019 2:41 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. LT Alberys Garcia	00000	945747	050 PCT
2. POM Joseph Diaz	25545	941005	050 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM James Tobin	04354	951340	ESS 04
2. POM Peter Wong	26984	946400	ESS 04
3. POF Tiffany Marchese	08360	957808	050 PCT
4. POM Matthew Sanchez	12030	966832	050 PCT
5. DT2 Everaldo Taylor	06908	918390	ESS 04
6. SGT Joseph Carolan	04027	953730	050 PCT
7. POM Jordan Gallagher	13436	957610	050 PCT
8. POM Kenneth Samuels	17700	959193	050 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Joseph Diaz	Abuse: Police Officer § 87(2)(b) ph Diaz threatened to remove § 87(2)(b) to the hospital.	§ 87(2)(b)
B.POM Joseph Diaz	Abuse: Police Officer § 87(2)(b) ph Diaz threatened to damage § 87(2)(b)'s property.	§ 87(2)(b)
C.LT Alberys Garcia	Abuse: Lieutenant Alberys Garcia entered § 87(2)(b) § 87(2)(b) in the Bronx.	§ 87(2)(b)
D.LT Alberys Garcia	Abuse: Lieutenant Alberys Garcia forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(b)

Case Summary

On November 14, 2019, § 87(2)(b) filed this complaint by phone with the CCRB while providing a statement regarding CCRB case #201909100.

On September 17, 2019, at approximately 7:27 p.m., § 87(2)(b) was home at § 87(2)(b) in the Bronx. § 87(2)(b)'s mother, had called 911 and requested a wellness check for him because he was not taking medication for an unspecified mental health condition. Police Officers Tiffany Marchese, Matthew Sanchez, Joseph Diaz, and Richard Crowe, all of the 50th Precinct, knocked on § 87(2)(b)'s door. § 87(2)(b) told the officers that he was fine and refused to open the door. PO Diaz told § 87(2)(b) that officers would break down his door and take him to the hospital if he refused to open the door and be evaluated by EMTs (**Allegations A-B: Abuse of Authority**, § 87(2)(g)). Additional officers from the 50th Precinct eventually arrived, including Lieutenant Alberys Garcia and Sergeant Joseph Carolan. Lt. Garcia spoke with officers and § 87(2)(b) and spoke to § 87(2)(b) through the door, before requesting that ESU officers respond to the location. § 87(2)(b) continued to refuse to exit the apartment or be evaluated by EMS. Lt. Garcia eventually directed the ESU officers to make forced entry into the apartment (**Allegation C: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) and Lt. Garcia directed that § 87(2)(b) be forcibly removed to § 87(2)(b) Hospital (**Allegation D: Abuse of Authority**, § 87(2)(g)).

The investigation obtained BWC footage from various officers on scene, including PO Diaz and Lt. Garcia (**BR03-12, summarized at BR13; BR21, summarized at BR22**). At the time of the incident, the ESU officers had not yet been assigned BWCs. All references to video evidence below refer to the time stamp in the video player, and not to any onscreen time stamp embedded in the footage itself.

Lt. Garcia has since been transferred to IAB. This investigation was hampered by delays in obtaining all relevant BWC videos and delays in interviewing officers caused by the COVID-19 pandemic.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Joseph Diaz threatened to remove § 87(2)(b) to the hospital.

Allegation (B) Abuse of Authority: Police Officer Joseph Diaz threatened to damage § 87(2)(b)'s property.

It is undisputed that PO Diaz made the following statements to § 87(2)(b) while speaking to him through his apartment door at the beginning of the incident: “They’re going to bring you [to the hospital] regardless at this point,” “They’re going to come and break down your door and take you to the hospital—that’s what’s going to happen,” and, “Eventually, they’re going to break the door down and drag you to the hospital. That’s what’s going to end up happening.”

§ 87(2)(b)'s 911 call was relayed to the officers as involving a man with mental illness who was not taking his medication and who was talking to himself. It identified § 87(2)(b) as his mother, indicated that she was not with him at the time, and that she wanted him to be evaluated (**BR02**).

The portion of the incident in which PO Diaz initially spoke to § 87(2)(b) through his door is shown in PO Crowe’s BWC footage (**BR06, approximately 02:00-14:00**), with PO Diaz making the above-listed statements between 09:03 and 14:00. A neighbor allowed the officers into the building, and PO Marchese asked the neighbor at that time, “Is that him screaming?” The neighbor seemed to reply, “Maybe,” but there is no screaming audible in the BWC footage. § 87(2)(b)'s

apartment door had a round hole drilled in it from a previous incident in which ESU made forced entry, so he and the officers could see one another and could speak to each other directly through the hole. The officers told § 87(2)(b) that his mother called because she was worried about him, and they asked him to open the door. He said he was fine and refused to open the door. § 87(2)(b) called § 87(2)(b) and spoke to her in Spanish as the officers waited, and § 87(2)(b) eventually arrived on scene and joined the officers. § 87(2)(b) argued with § 87(2)(b) through the door, continued to refuse to open the door, and said he was going to call the FBI. During this time, the officers radioed for a supervisor because they believed the incident involved a “barricaded EDP.” § 87(2)(b) continued to tell the officers that he was fine, that they had no information about him beyond what § 87(2)(b) had told them, that they could not make him open the door without a warrant, and that they should leave. PO Diaz’s comments to § 87(2)(b) came in the context of this broader back-and-forth through the apartment door. At approximately 09:03 in the footage, PO Diaz says, “They’re going to bring you [to the hospital] regardless at this point.” § 87(2)(b) asks, “Why?” PO Diaz replies, “Cause look at how you’re acting.” § 87(2)(b) says, “Bro, I’m not acting like anything. All I’m asking is questions.” PO Diaz says, “Really? You’re going to call the FBI? I’m the crazy one here.” At 10:20, PO Diaz says, “They’re going to come and break down your door and take you to the hospital—that’s what’s going to happen.” At 12:35, § 87(2)(b) asks, “What are you going to do, come in my apartment?” PO Diaz replies, “Yeah, eventually.” § 87(2)(b) asks, “Don’t you need a warrant?” PO Diaz says, “We don’t need one.” At 13:10, PO Diaz says, “Keep it closed. If that’s what you want to do, fine. Eventually, they’re going to break the door down and drag you to the hospital. That’s what’s going to end up happening.”

PO Diaz testified (BR14) that he thought § 87(2)(b) reported to 911 that § 87(2)(b) was bipolar and was not taking his medication, but he could not recall with certainty. He could not recall if § 87(2)(b) told 911 that § 87(2)(b) might harm himself or had previously hurt himself or someone else. He recounted that § 87(2)(b) yelled, spoke “angrily,” and made “erratic” statements during the conversation at his door, including that he was going to call the FBI. PO Diaz did not recall if § 87(2)(b) said that he would harm himself or someone else. Based on the extended conversation with § 87(2)(b) PO Diaz believed that § 87(2)(b) was emotionally disturbed and unmedicated, and he thought § 87(2)(b) might harm himself if the officers left. PO Diaz and the other officers followed protocol for a “barricaded EDP” incident, which was to radio for supervisors to respond. PO Diaz believed, based on his observations of § 87(2)(b) as well as his experience with previous similar incidents involving emotionally disturbed persons, that a supervisor would eventually direct officers to make forced entry into the apartment and remove § 87(2)(b) to the hospital if § 87(2)(b) continued to refuse to open his door and submit to a medical evaluation. PO Diaz noted that such a removal to the hospital would be predicated upon EMS personnel evaluating § 87(2)(b) and determining that he was “mentally ill.”

PO Diaz reviewed the BWC footage and explained that he made the above-listed remarks to § 87(2)(b) based upon his prior experience with similar EDP incidents, and that he was merely telling § 87(2)(b) what he expected would happen if he refused to open his door. During the CCRB interview, PO Diaz explained his thought process at the time he made the remarks to § 87(2)(b) “Eventually, ESU would probably come and break down the door and bring him to the hospital if he didn’t open the door. I was trying to be forthright with him, that’s what was probably going to happen.” When asked if he made the remarks to convince § 87(2)(b) to open his door, PO Diaz explained, “Yeah, if he did open the door, great. But I was being honest with him, that’s what was probably going to happen if he didn’t open the door.” PO Diaz further explained regarding the remarks, “I was just being honest with him. As far as I know, with the mental hygiene laws, you don’t need a warrant to remove someone from an apartment. And if that statement made him open the door, great. Even better. But I don’t remember if that was my headspace, if that was what I was saying to get him to open the door, but I believe I was just being honest with him.”

§ 87(2)(b), § 87(2)(g)

Patrol Guide Procedure 221-13 (BR15) states that an officer, and typically a supervisory officer, can take an “emotionally disturbed person” into custody if the person does not voluntarily seek medical assistance, provided that the person “appears to be mentally ill or temporarily deranged and is conducting himself in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others.”

§ 87(2)(b), § 87(2)(g)

Allegation (C) Abuse of Authority: Lieutenant Alberys Garcia entered § 87(2)(b)

§ 87(2)(b) **in the Bronx.**

Allegation (D) Abuse of Authority: Lieutenant Alberys Garcia forcibly removed § 87(2)(b) **to the hospital.**

It is undisputed that Lt. Garcia directed officers to make forced entry into the apartment and to forcibly remove § 87(2)(b) to the hospital.

As noted above, § 87(2)(b)'s 911 call was relayed to the officers as involving a man with mental illness who was not taking his medication and who was talking to himself. It identified § 87(2)(b) as his mother, indicated that she was not with him at the time, and that she wanted him to be evaluated (BR02).

PO Marchese's BWC (BR03, approximately 25:40-29:20) shows her initial conversation with Lt. Garcia when he arrived on scene, and Lt. Garcia's BWC videos (BR11-12) provide a largely comprehensive view of his actions during the incident. PO Marchese told Lt. Garcia that § 87(2)(b) was refusing to open the door, that § 87(2)(b)'s mother called 911 because § 87(2)(b) was hearing voices and had PTSD, and that § 87(2)(b)'s neighbor heard him yelling in the apartment. Lt. Garcia asked § 87(2)(b) if § 87(2)(b) had any weapons, and she replied that he was not a person who used weapons and she had never seen any weapons. Through the apartment door, Lt. Garcia asked § 87(2)(b) to talk to an EMT. § 87(2)(b) was angry by this time. He yelled at Lt. Garcia, told him to leave, and said that he did not want to speak to EMS personnel. At that point, Lt. Garcia requested that ESU officers respond. Sgt. Carolan explained to Lt. Garcia that ESU officers made forced entry into § 87(2)(b)'s apartment about a month earlier and found that § 87(2)(b) was not there (as detailed in CCRB case #201910663). Lt. Garcia again asked § 87(2)(b) again about weapons, and she again indicated that § 87(2)(b) did not have weapons.

Lt. Garcia brought an EMT upstairs to speak to § 87(2)(b). § 87(2)(b) spoke to the EMT, but the EMT told him that he could not evaluate him unless he opened his apartment door. § 87(2)(b) explained that he did not want to open the door or waive his rights, and he complained about the prior incident in which officers conducted what he believed was a warrantless search of his apartment. Lt. Garcia tried to speak to § 87(2)(b) again, but § 87(2)(b) declined to speak to him. Lt. Garcia briefly spoke by phone to Captain Johnny Orellana of the 45th Precinct, who was the Duty Captain that evening. Lt. Garcia told Capt. Orellana that § 87(2)(b) had PTSD and was bipolar, that

his mother called 911, that ESU was en route, and that ESU had made forced entry in a prior incident.

Lt. Garcia then had a lengthy conversation with the EMT and § 87(2)(b) which was complicated by Lt. Garcia speaking to § 87(2)(b) in Spanish and translating some of what she said for the benefit of others on scene. The EMT asked if the neighbors said anything about § 87(2)(b) trying to harm himself, and Lt. Garcia attempted to get clarity from § 87(2)(b) on whether § 87(2)(b) had ever tried to harm himself. § 87(2)(b) insisted that the officers could not leave § 87(2)(b) in his apartment and that they had to force him to go to a specific hospital. Lt. Garcia explained to § 87(2)(b) that she would need to provide more information, because officers generally needed to have reason to believe a person would harm himself or others before they could forcibly remove that person to a hospital. § 87(2)(b) said that she had never known § 87(2)(b) to want to harm himself, but that he could become a little violent. Lt. Garcia explained again that § 87(2)(b) would need to provide more information if she wanted the officers to be able to help § 87(2)(b) but she merely added vaguely that § 87(2)(b) had struck her at some point in the past.

A sergeant from ESU arrived, and Lt. Garcia told him that § 87(2)(b) was a barricaded EDP, that neighbors had said that § 87(2)(b) was going to hurt himself, that his mother had also called 911 and wanted him taken to a hospital, that he was formerly in the military, that he had PTSD, and that he was possibly bipolar. The ESU sergeant asked § 87(2)(b) if § 87(2)(b) took medication, and she replied that she did not know. She confirmed that he did not have weapons and was not previously violent with the police.

The EMT then approached Lt. Garcia again and questioned the basis for forcing § 87(2)(b) to go to the hospital. Lt. Garcia said, “The neighbors say suicidal—we can’t just leave him there and then it’s on us.” The EMT replied, “I know, of course not, if he’s suicidal. But that’s not what I got. All I got was he was talking to himself in the apartment. It would be his word against her word. And he’s banging on the walls. So, I’m trying to figure this out so this way we’re taking him to the hospital for the right reason. Not just a mental health situation, but that we’re taking him because he needs help. But we’re taking him—if they say he’s suicidal, we’re taking him. If they say he’s suicidal, we’ll go with that, because suicidal sounds better than talking to himself.” Lt. Garcia examined the text about the 911 call in the computer system and read aloud that it involved a man with mental illness, that it was unknown if the man was violent, and that the man did not have weapons. The EMT remarked, “He’s just in the house talking to himself, pretty much.”

Lt. Garcia asked § 87(2)(b) again if § 87(2)(b) had ever indicated that he wanted to hurt himself, and she stated clearly that she had never seen such an indication. § 87(2)(b) reiterated that § 87(2)(b) was diagnosed with PTSD. The EMT told her that they would take § 87(2)(b) to the hospital if she was concerned about his safety. Lt. Garcia explained again to her that the officers could not force him to go to the hospital if he was not going to hurt himself or someone else, and he said the officers would take § 87(2)(b) if § 87(2)(b) thought that he would cause harm. § 87(2)(b) replied, “This is what I need. He’s very depressed, he’s alone, he’s moved away from everyone.” Lt. Garcia said, “Ok ma’am, but I’m asking you specifically if you believe that he’s going to harm himself or someone else?” § 87(2)(b) said, “He’s depressed. I’ve never seen that he’s going to cause harm. But right now, he’s nervous, traumatized, because I’ve never done this.” Lt. Garcia asked, “But it’s for his own good?” and § 87(2)(b) replied, “For his own good.”

Lt. Garcia then returned to Sgt. Carolan and asked him whether § 87(2)(b) was reported to be suicidal during the incident a month prior. Sgt. Carolan initially replied, “The call came that he got into an argument with his dad, and that he was suicidal.” Sgt. Carolan began to search for the 911 record of that incident in his phone while saying to Lt. Garcia that he thought § 87(2)(b)’s father had said that he was going to kill himself. Lt. Garcia said, “Oh, ok,” and walked a few feet away from Sgt. Carolan. Sgt. Carolan quickly said, “No, no,” to correct himself, and told Lt. Garcia, “It was, ‘He’s not taking his medication.’ PTSD and he wasn’t taking his medication.” Lt.

Garcia replied, “Because if the dad said, with his previous history...” and Sgt. Carolan reiterated that ESU made forced entry in that incident but § 87(2)(b) was not in the apartment.

Lt. Garcia then called Capt. Orellana back and told him, “They took the door before, I’m asking the sergeant here... They took the door before, he wasn’t taking his meds, and I believe Carolan believes that he spoke to the dad, that the dad said that he’s suicidal. Today, it’s because he was talking to himself and stuff. But based on the previous incident that he was suicidal, I called ESU.” Sgt. Carolan told Lt. Garcia that the ESU officers wanted to breach § 87(2)(b)’s door. Lt. Garcia relayed that to Capt. Orellana, who apparently assented, as Lt. Garcia then told Sgt. Carolan to tell the ESU officers to make forced entry.

In his memo book entry regarding the incident, Lt. Garcia wrote, “EDP uncooperative. Mother is concerned he is going to harm himself” (BR01).

Lt. Garcia was not interviewed until more than 16 months after the incident (BR16), and his recollection of the incident and of his conversations on scene was far less detailed than the comprehensive account provided by the BWC footage. He recounted generally that § 87(2)(b) was “not being rational” and “wasn’t making sense” during the incident. Lt. Garcia could not recall if § 87(2)(b) specifically threatened to harm himself or others when the two briefly spoke through the apartment door. He testified that he did not know if § 87(2)(b) had weapons, and that he did not get any specific information about his potential access to weapons. He initially testified that a neighbor said something about § 87(2)(b) being suicidal, but he could not recall who told him this, nor could he recall how or when he learned it. He later testified that a neighbor said they could hear § 87(2)(b) “ranting” in his apartment, and that he “assumed” a neighbor called 911 out of “concern” for § 87(2)(b)’s wellbeing. As noted above, only § 87(2)(b) called 911 during this incident. Viewing the portion of the BWC footage in which he told the ESU sergeant that § 87(2)(b)’s neighbors said he was going to hurt himself did not refresh Lt. Garcia’s recollection of how he learned that information.

With regard to his conversation with § 87(2)(b) Lt. Garcia testified that she was concerned for § 87(2)(b)’s safety because he had mental health conditions, and because she was “afraid that he may cause harm to himself.” He recounted that he asked her whether she thought § 87(2)(b) would harm himself, and that she said that she was “not sure” and that § 87(2)(b) was very “nervous.” Lt. Garcia also recounted that Sgt. Carolan told him § 87(2)(b) had been suicidal during a previous incident. After viewing the portion of the BWC footage in which Sgt. Carolan corrects himself regarding whether § 87(2)(b) was suicidal during the previous incident, Lt. Garcia testified that he did not recall that remark. Lt. Garcia also did not recall the conversation, depicted in the BWC footage, between himself and the EMT regarding whether anyone had reported that § 87(2)(b) was suicidal.

Ultimately, Lt. Garcia testified that he believed that § 87(2)(b) needed to be removed to the hospital due to § 87(2)(b)’s concern for his wellbeing, his mental health history, and his status as a military veteran with PTSD. Lt. Garcia believed that § 87(2)(b) was a danger to himself, and that he might hurt himself or someone else if officers did not make entry into his apartment.

The Ambulance Call Report noted that § 87(2)(b) reported that § 87(2)(b) was talking to himself, banging on walls, and acting “erratic” (see Privileged Records). § 87(2)(b) said that he was in a long-running dispute with § 87(2)(b) and that she was lying. He denied any suicidal or homicidal ideation, denied that he was experiencing hallucinations, denied using alcohol or drugs, but otherwise refused to cooperate with EMS personnel. § 87(2)(b)’s records from § 87(2)(b) Hospital (see Privileged Records) indicate that, by the time he reached the hospital, staff were told that he had verbalized suicidal ideation and that he had been observed talking to himself. § 87(2)(b)’s behavior worsened as he continued to refuse to cooperate with medical staff, and he was eventually restrained and forcibly medicated. The hospital eventually confirmed that he had a history of depression, adjustment disorder, and bipolar disorder, and that he had been held for treatment about four months prior. § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

Patrol Guide Procedure 221-13 (**BR15**) states that an officer, and typically a supervisory officer, can take an “emotionally disturbed person” into custody if the person does not voluntarily seek medical assistance, provided that the person “appears to be mentally ill or temporarily deranged and is conducting himself in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others.”

Officers may make a warrantless entry into a residence if they have reasonable grounds to believe that an emergency inside threatens life or property. This belief must be grounded in empirical facts. Officers also must have a reasonable basis, approximating probable cause, to associate the emergency with the area or place to be entered. *People v. Doll*, 21 N.Y.3d 665 (2013) (**BR17**).

§ 87(2)(b), § 87(2)(g)

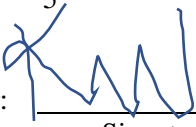
Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to three CCRB complaints and has been named as a victim in thirteen allegations (**BR18**):
 - § 87(2)(b)
 -
 -
 -
- Police Officer Joseph Diaz has been a member of the NYPD for fifteen years and has been a subject in three CCRB complaints and seven allegations, none of which were substantiated. § 87(2)(g)
- Lieutenant Alberys Garcia has been a member of the NYPD for seven years and has been a subject in five CCRB complaints and seven allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- According to the Office of Court Administration, between May 8, 2011, and August 31, 2021, § 87(2)(b) was convicted of burglary in the second degree and of violating a public health law, § 87(2)(b) (BR19). OCA does not list any other convictions.
- As of August 12, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this complaint (**BR20**).

Squad No.: 5

Investigator: 
Signature

Inv. Katherine White
Print Title & Name

September 3, 2021
Date

Squad Leader: Daniel Giansante
Signature

IM Daniel Giansante
Print Title & Name

September 3, 2021
Date

Reviewer: _____
Signature

Print Title & Name

Date